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"An Exploration into the Performing Arts and the Political Economy of Ticketing: The Case of Ticketmaster"

Abstract

Mainstream monopoly theory, and as related to anti-trust measures, evaluates the concentration of an industry to help determine if a firm has monopoly power within an industry (Cabral 2000). If a firm is dominant, then it is presumed that consumer surplus is being reduced at the expense of producer surplus and that the industry requires competition regulation by the state. The study of ticket-pricing for live events has lately been an especially attractive field of study (i.e., US GAO 2018, ticketeconomist.com). We explore the research question, does Ticketmaster have a monopoly? We start with Rogers, *Law & Liberty* (2018), that monopoly power only exists when there are regulatory barriers to entry. We critique the existing literature on ticket-pricing and Ticketmaster in light of Rogers 2018, and pose further research questions on the study of 'monopoly'. In addition, we use Vassallo (2017) who finds that analytical measures (aggregates) in applied microeconomics for market / industry classifications may be arbitrary and we examine alternative concepts of competition analysis in light of any Ticketmaster 'monopoly' using Austrian School capital theory to evaluate the live event industry.

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An Exploration into the Performing Arts and the Political Economy of Ticketing: The Case of Ticketmaster[1]

Or, alternative title

An Exploration into the Performing Arts and the Political Economy of Ticketing: A Question of Language[2]

I. Introduction and methodology

The study of ticketing for live performances is evergreen in the cultural economics research program (Courty 2019, Courty and Paglieiro 2014, Black et al. 2018, Cameron 2018, Halcoussis and Mathews 2018, Krueger 2005 and 2019, ticketeconomist.com). Ticketing is also a matter of competition policy concern (Schneiderman 2016, US GAO 2018).

Our paper tries to provide a fresh (heterodox[3]) perspective into mainstream (orthodox) analysis by disaggregating the live music industry into stages of production to advance further understanding of the industry from the perspective of competition theory. This paper then is a heterodox critique of the mainstream orthodoxy in cultural economics.

When time, entrepreneurial risk and incentive-compatibility along the stages of production are considered we can visualize how the market-process provides value for the consumer absent restraints to competition (Rogers 2018). When competition theory is understood, we find that much basis for concern about pricing rents are alleviated. We find that it is only when regulatory constraints and

1 The genesis of this work was presented at the Global Business Research Symposium, sponsored by St. John's University, Valencia, Spain, June 4-6, 2019. This present paper is more focused towards current issues in the cultural economics research program as opposed to the general category of industrial organization. We thank the participants at the GBRS for their comments and their patience towards these heterodox approaches.

2 Note potential name-change for this present research, it is less specifically about Ticketmaster (now Live Nation), and more about the philosophy and methodology of cultural economics than originally anticipated. I thank Francisco Aldape for his timely comments on this paper.

3 Hayek won the Nobel in 1974 yet Austrian economics is still considered 'heterodox' whereas Buchanan won the Nobel in 1986 and public choice is now part of the orthodox.

capture are present that consumers lose surplus in their choices for value-creating consumption in live music enjoyment.[4]

We also address recent findings by Pascal Courty in *JCE* about 'fair' pricing (Courty 2019) and their more recent post to EconomistTalkArt.org specifically about 'bots'. Due to the perishable goods nature of live events, and the inherent capriciousness in the demand for live musci, any cookie-cutter ideas towards value-creation and distribution outside of the market may be at best futile and at worst counter-productive.[5] This is not to say that one should take a nihilistic approach to live event pricing policy only that regulatory humility might better than trying to correct any perceived 'market failure' (see Levy and Peart 2017 on some of the unintended consequence of an over-reliance on "experts").

We hope that our Austrian (free-market) approach to the understanding of the industrial organization of live (music) events helps to further value-creation in the cultural economy by preventing unnecessary regulation and therefore increased transactions costs in the staging of live music events, be they for profit or in the not-for-profit-sectors. The more that creative destruction is allowed to occur the more that value is created over the long term.

II. A Basis for competition theory: F.A. Hayek on language about an "open society" versus an "economy"

We begin our understanding of competitive theory as applied to the arts (specifically in our case the 'perishable goods' of performing arts) through an analysis of the language used in economics. Hayek finds that the term "economy" has come to mean in common language and as used relatedly of course by the 'profession' the canonical Lionel Robbins definition as economics being 'the study

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[4] Then end result of concerts made 'free' through regulatory fiat is of course a queue for these 'free' tickets. Just like at our local public swimming pool in Sunset Park, Brooklyn in the summer; it is 'free' but people queue in long lines. It is part of the local culture.

[5] "Beyond banning bots, we have shown that a one-size-fits-all regulation of ticket markets is not the appropriate way to address the problem. This is not to say that there is no role for government. The challenge is to accommodate some event organizers' needs to have some control over what buyers can do, while putting restrictions to prevent abuses" (Courty 2019, 359). A main purpose of this paper is to show that the market-test may be better regulation than government fiat due to the uncertainty inherent in the pricing of perishable goods.

of the disposal of scarce means towards the realization of given ends' (Hayek 1968, 29, fn1).[6]

Hayek finds this view of society as a crude 'constructivist-rationalism' (or 'particularistic utilitarianism') (ibid., 24). Not all human behaviour is a means-end calculus. 'Economy' has become to mean that all action must be towards some immediate identifiable end, and therefore human action must be guided toward this calculable end.[7]

Hayek rejects this determinism and prefers to use the term *catallaxy* rather than *economy* to describe a freely-associative society, in that catallaxy, the concept of the study of spontaneous order through voluntary exchange[8], is more open to understanding an ordering around uncertainty than is a teleological 'economy'. We note that this idea of a catallaxy rather than economy is especially relevant to creative 'sectors'. Hayek frames the language consciousness in terms of thinking about an 'open society' versus that of a 'tribal society'[9]. When we think of open societies there is no calculable pie to divide in an adversarial nature.

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6 Hayek continues, "It seems to me appropriate only to that preliminary part of catallactics which consists in the study of what has sometimes been called 'simple economies' and to which also Aristotle's *Oeconomica* is exclusively devoted: the study of the dispositions of a single household or firm, sometimes described as the economic calculus of the pure logic of choice. (What is now called economics but had *better be described as catallactics* Aristotle described as 'chrematistike' or the science of wealth). The reason why Robbins' widely accepted definition now seems to me to be misleading is that the ends which a catallaxy serve are not given in their totality to anyone, that is, are not known either to any individual participant in the process or to the scientist [expert, author, analyst, see Levy and Peart 2017] studying it" (*emphasis added*).

7 See Phelps 2015 for a considered view of how utilitarianism has failed the 'west'.

8 Adam Smith's "invisible hand" is an example of this idea (Hayek 1968, 12, fn1). "Spontaneous order is F.A. Hayek's useful description of precisely what it is that economists have been trying to explain for two centuries" (Levy 2002, xiii).

9 The idea of a 'tribal society' also relates to what Madison in the *Federalist Papers* (No. 10) calls 'faction', "the public good is disregarded in the conflicts of rival parties" (Hamilton et al. 1787-88, 61). This has evolved into insider-outsider theory in public choice economics. The insiders take advantage of the outsider through positive 'economic' law-making. Oftentimes the end result is regulatory-capture based on the 'knowledge problem' (see fn10 below). This is where the Federalists and the public choice theorists diverge. The Federalists believed that a larger polity (with a 'vigorous' federal government) could draw on a larger populace from which to draw 'enlightened' statesman. The Federalists believed that man's nature can be changed for

> By analogy with the term *catallactics* which has often been proposed as a replacement for the term ‘economics’ as the name for the theory of the market order, we could describe that order itself as a catallaxy. Both expressions are derived from the Greek verb *katallatein* (or *katallasien*) which significantly means not only ‘to exchange’ but also ‘to receive into the community’ and ‘to turn from enemy into friend’ (Hayek 1968, 29).

As we find later current orthodox thinking towards ‘economic’ regulation sets-up a dichotomous relationship, in fact perhaps in the United States, a District Attorney and legislative self-interested public choice feeding frenzy against innovation. All of which are predicted by public choice economics as discussed below. Hayek (1968) makes the necessary distinction where common or civil law is the basis (“superstructure”) of an ‘open society’, public law in the basis for an ‘economy’.

III. A Note on theory versus empirics in the applied economics of industrial organization and antitrust / competition policy

Andrew Vasallo’s 2017 article in the *Journal of Competition Law & Economics* provides the needed critique of empiricist antitrust methodological foundations based on ‘economic’ methodology. Vassallo finds that incremental changes in the measurement of an industry, firm or market will lead, or not lead, to antitrust investigations by the U.S. Department of Justice and/or the Federal Trade Commission, based on the regulatory standards defined by these organizations. In other words, what the analyst defines as the market can determine the regulatory result.[10]

Thus we can find that regulation might be arbitrary, ie., contra the rule of law in Hayek’s catallaxy, where absent unanimous definitive ends, most positive action by the state results in value-loss due to faction (special interest) rents. The question of how we define an industry or firm (for the purposes of regulation towards the ‘public good’) becomes more significant when we examine the stages-of-production, or capital structure, in an industry, especially for our purposes, the ticketing for live (perishable) events. We find that segregating market components into measurable ‘industries’ for regulatory purposes is arbitrary at best. In what

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the ‘better’, whereas public choice accepts people as they are. Buchanan calls this ‘politics without romance’.

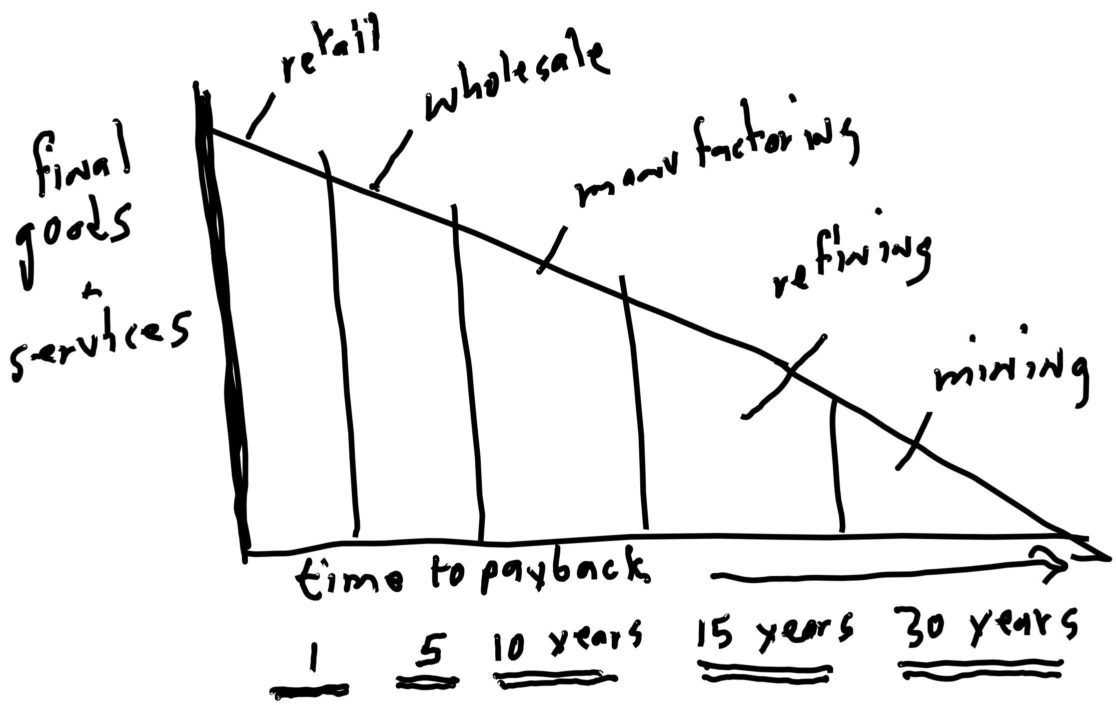
[10] This category of problem, when regulators attempt to second-guess market participants with less knowledge than the participants themselves, is called the “knowledge problem” as developed by Chicago school, public choice and Austrian economics scholars based on Hayek 1945, which itself was a response to the ‘socialist calculation debate’ beginning in the 1920s.

follows we examine the concept of the stages-of-production, then develop stages-of-production for the live performance (music) ‘industry’, then we critique recent scholarship and regulatory findings related to this ‘industry’ in light of competition theory.

IV. Stages of production

First we introduce the (Hayekian) stages-of-production in an ideal-type, where we find the capital structure emerged in a society given social institutions and individual time-preferences.[11] A capital-structure emerges ordering specialization of labor and investment-preference.

Figure One: Stylized-Fact Capital Structure in an Economy



[11] Note that the ‘Hayekian triangles’ used here differ from those in Garrison (2001). We use time outward along the X-axis to proxy current (t = 0) entrepreneurial decision-making, as opposed to an historical aggregation of capital structure (they are the same theoretically under ‘equilibrium’). Our approach is related to that of Robert Higgs who evaluates the forward-looking investment climate as a proxy for sound institutions, a proxy for political risk, or “regime uncertainty”. As far as I know this research is the first use of the Austrian capital theory and the stages-of-production heuristic in application to industrial organization and firm analysis.

In Figure One we can observe an emerged (ideal-type) capital structure in an economy. Mining takes the longest to payback (is the most ‘roundabout’ stage of production), whereas retail pays-back the quickest. We assume that entrepreneurs (or firms) investing in each in stage receive ‘normal’ profits, similar to the perfect competition assumptions of neo-classical economics, only that we would expect these ‘normal’ profits to be greater for more roundabout stages as return for patient capital (time-preference theory). This capital theory can be applied to the economy-as-a-whole, for a specific industry (however measured by whom and with what subjective or imitative knowledge-assumptions), and/or when applied to a specific firm.[12] The stages-of-production all lead toward the market for the final goods and services in the economy or industry or firm under analysis.

The disaggregated interconnectedness of the value-chain as visualized with the Hayekian triangles helps to show the weakness in relying on ‘concentration indexes’ such as the HHI as directed under the Justice Department Merger Guidelines (Krueger 2005, 22-25) as a proxy for market power in that there can be ambiguities in strict measurement of each stage of production in relation to the value-chain both upstream and downstream. It is difficult to pin-point a ‘market’ for analysis, and marginal analytical decisions about market measurement can alter the results (Vassallo 2017). This makes regulatory analysis arbitrary by definition.

The classic text in the theory and application of antitrust regulation is Robert Bork’s *The Antitrust Paradox* (1993 [1978]).[13] In Borkian analysis, vertical firm integration can improve efficiency and therefore can improve consumer welfare. However, for Bork, horizontal firm integration can create monopoly-power, and this can subtract from consumer welfare. (It should be noted that in our triangles,

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12 This is known as a ‘capital-based theory of the firm’ (Langlois 2013).

13 According to wiki, *Paradox* is one of the most cited texts in academia regarding antitrust and is cited in more than 100 court cases, including SCOTUS. Bork’s work was instrumental in aiding the deregulation occurring during the time of the first edition of *Paradox*. However today we are seeing a shift in regulatory purpose, from protecting the consumer from surplus extraction by firms with monopoly power to one of ‘protecting’ firms from ‘undue’ competition by those firms with said ‘monopoly power’, as determined again arbitrarily by regulators. An example of this is the ‘interim measure’ taken by the E.U. against the ‘American’ firm Broadcom in October 2019.

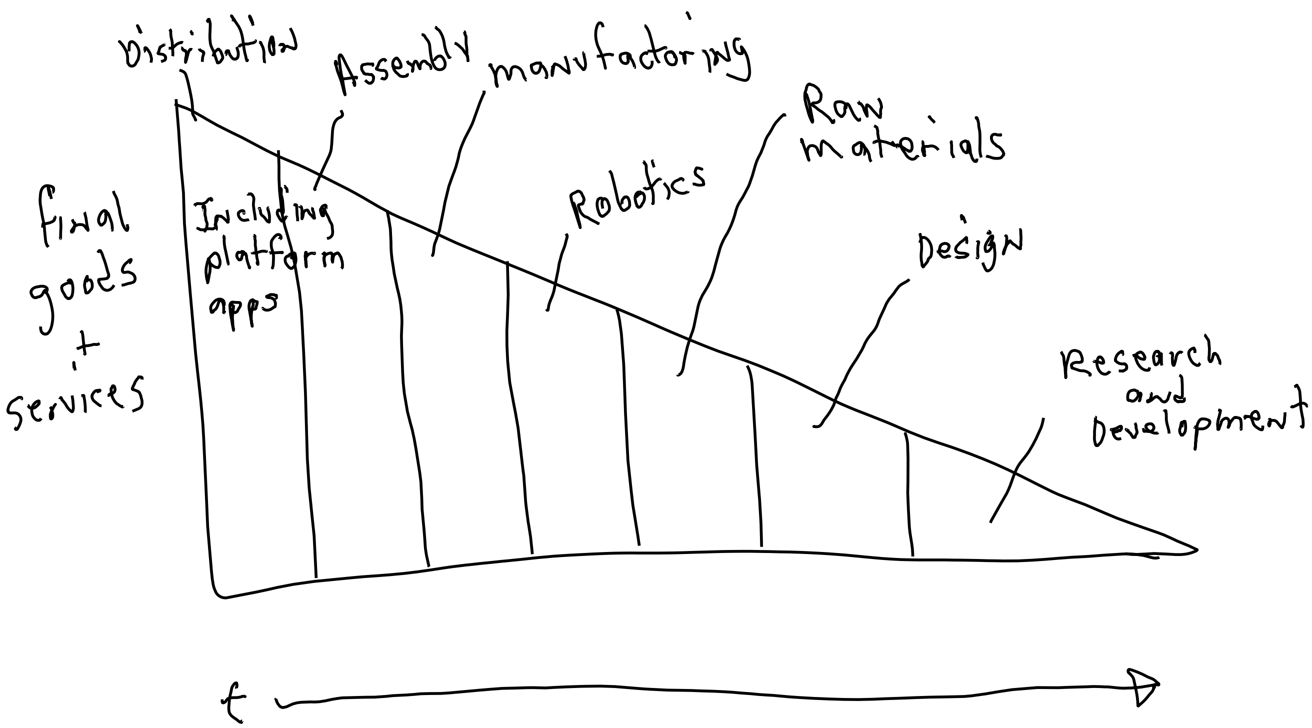
> The European Commission’s top antitrust enforcer, Margrethe Vestager, said “interim measures” were taken against the company, the chip maker Broadcom to ensure that its competitors were not marginalized [*sic*] amid an inquiry (Satariano 2019).

counter-intuitively, the X-axis stages represent 'vertical' value-added towards the final consumption of goods and services.) In order to determine which horizontal 'market' should be analyzed for antitrust complaints, the analyst must determine into which vertical stage the horizontal market under analysis belongs. Again, as stated, this is an arbitrary process.

Stages-of-production and knowledge-errors in the 'new' economy

In Figure Two we update these original stages-of-production to take into consideration our 'new' digital economy. Smart-phone apps have become increasingly important as platforms linking buyers-and-sellers in specific markets, giving 'long-tail' distributions (Anderson 2006) in many market categories.[14]

Figure Two: Updated Stages-of-Production for the 'New Economy'



[14] In addition, platform apps are not of course limited to the distribution stage-of-production.

Platforms are decentralized and not easily-identifiable by regulators. It is for this reason that regulators and unions are seeking to declare platforms as "service-providers" making ICT (information and communications technology) firms legally-responsible for regulatory compliance for the upstream stages of production (Scheiber 2019). The 'new' economy has reduced transactions costs (information costs) and has increased entrepreneurial awareness in many markets bringing economic efficiency, consumer surplus and improving standards of living. To make a *platform* firm (an electronic bulletin board) responsible for fraud or other commercial crime, instead of the *direct parties to the transactions* facilitated by the platform, would effectively limit the potential of our 'new' economy in reducing transactions costs and increasing economic efficiency.[15]

We can use the recently-settled Apple–Qualcomm case (*Economist* 2019) to help understand the Austrian-based capital structure presented here. Apple and other smartphone makers use Qualcomm's intellectual property (patents) in their phones. The stages-of-production for Apple and other makers of mobile phones might be assembly and distribution. Then, depending on how vertically-integrated a specific firm is, the firm's capital structure might extend out to R&D. We know in the specific case of Apple that of course R&D and design[16] are part of the firm's competitive advantage. Some parts of a firm value-chain may be outsourced depending on the transactions costs facing the firm (entrepreneur)[17] along its stages-of-production, its own subjective and tacit asset-specificity. Again in the case of Apple they find it worthwhile to outsource some of its assembly. Qualcomm's IP might be considered in the R&D stage, and is selling (leasing) its IP downstream, through the chips-component manufacturers (raw materials, design, robotics) who then sell downstream to phone-makers.[18]

Regulators for example interested in evaluating market concentration and market power in the smartphone industry would then have to make a subjective decision as to which stage(s)-of-production does this industry belong. Apple sued Qualcomm

15 This is not to condone the sharing of user-data without explicit authorization, something which is already illegal.

16 See Weber (2017) on the importance of design in firm strategic planning.

17 Sobel et al. (2007) find that entrepreneurial-led firms as they become established become less innovative once a professional CEO is engaged.

18 The reader may disagree with some of the stages into which I classify specific industries, this illustrates the subjectivity of applied 'economic' industrial organization.

in a California court because Qualcomm was seeking payment directly from the phone-makers (around 5% of the retail price of a phone), instead of seeking payment from the component-makers who use the IP directly. There was an out-of-court settlement. We can reasonably debate if IP enforcement is a form of monopolist-creation under the definition in Rogers (2019), though if we do then we leave ourselves open to the ambiguities of applied structural 'economic' regulation and not always out-of-court settlements.

Stages of production in the live music industry

Next we describe the categories used in recent research on the industrial organization of live music[19], and then in terms of Austrian-based capital theory, in order to better understand and critique recent calls for 'economy' in this 'industry'.[20]

[19] The typology used here is drawn primarily from Tschmuck (2017b) and US GAO (2018).

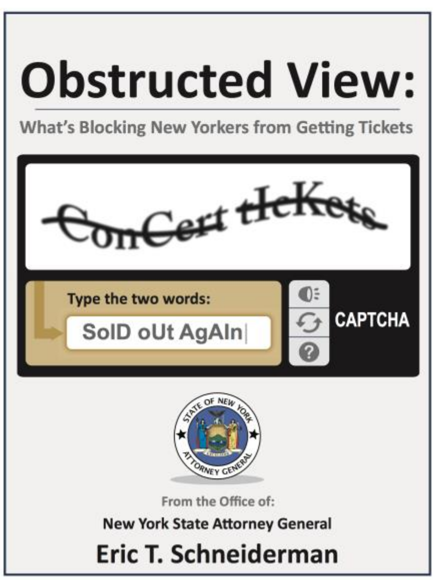
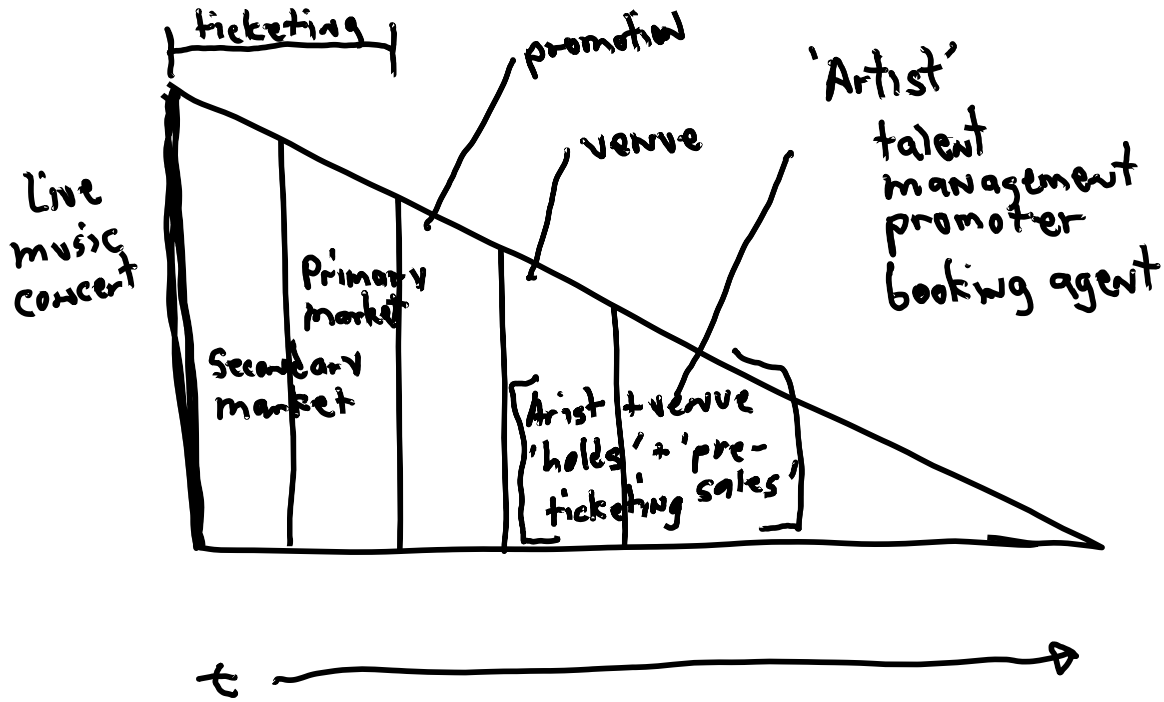
20 

Figure Three: Orthodox Stages-of-Production in Live Music Industry



The original source of value in live music concerts is the artist.[21] For our purposes here (and again this is subjective, but seems consistent with the literature), we can classify the talent, as well as the talent's management, promoter and booking-agent, into the artist stage-of-production. Downstream from the artist, and upstream from the concert itself we have, in descending order of roundaboutness, the venue, promotion and ticketing.[22]

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[21] A&R is the R&D of record labels, though of course record labels are increasingly less relevant under the wide-tail distribution of self-produced music through advances in digital technology.

[22] We cannot assume in all cases that management has incentive-compatibility with talent. Union monopoly-power (a vestige of the 1935 Wagner Act, and a source of 'monopolistic' power) creates asset-specificity and inefficiency. An example is the recent (Koblin 2019**)** dispute between the Writers Guild of America, who represents TV and film writers (we assume writers are in the talent stage-of-production for this industry) and the Association of Talent Agents.

> But Latham & Watkins, the law firm working for the agents, sent a letter to the W.G.A. on Friday saying that, if managers or lawyers' function as agents, they would be breaking the law. The firm pointed to the California Talent Agency Act and New York's General Business Law. No one may assume agenting duties [*sic*] without having a license [legal

In that a predominant 'industry' of concern to regulators and cultural economists is ticketing, we need to detail categories. One market in ticketing is the primary market (i.e., the 'list price' or 'face value' of a concert).[23] Downstream from the primary market is the secondary-market and upstream the venue and the artist. In negotiation along the stages-of-production value-chain there are also 'hold' and 'pre-sale' ticketing. These tickets can take many forms. Negotiations can include setting-aside tickets for distribution by the venues or the artists (including passing these holds downstream in lieu of monetary compensation, something we can take as a form of entrepreneurial risk-sharing).[24] Risk-sharing along the value-chain aligns incentives and can help create a better product at a lower-price.

As the term implies, 'pre-sales' occur before the primary market (however measured by whom and with what subjective or imitative knowledge-assumptions[25] and for what, usually 'economic' regulatory, reasons). These tickets are sold to artist fan clubs, or crowd-sourcers, or participants in special promotions, including priorities for certain payment methods.[26] Negotiations along the value-chain are dependent upon the plans made by the cooperating entrepreneurs to bring

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barriers-to-entry, author], Latham & Watkins said in the letter, which went on to threaten that the agents would "take appropriate action as needed, against any person engaged in unfair competition [*sic*]".

23 We agree with Armentano (1978) that it is impossible to determine in advance what the final stage-of-production market-process price will be, this can be especially true in the capricious nature of the music industry, as discussed below.

24 Two additional examples of how the stages-of-production might be helpful in understanding the 'market' are Courty and Pagliero (2014) and Schneiderman (2016). Courty and Pagliero (2014) is specifically dedicated to analysis of the primary market alone, without taking into consideration the larger relationships necessary in staging an event. Schneiderman (2016) finds that 'economic' regulation is necessary because not enough tickets are made available (usually by Live Nation) for a small sample of superstar events to all those who would wish to attend the event. This finding de-emphasizes the tickets which are not available in later stages-of-production due to risk-sharing along the value-chain. To be fair Schneiderman does call for deregulation of the 'economic' by allowing more ease-of-sale in the secondary market, however inconsistently while at the same time calling for a prohibition on bots.

25 "Imitative knowledge assumptions" refers to the fact that much research uses related methodology which has been previously published. This in turn gives a better chance for publication of the 'new' research. Publication is necessary to have a successful academic career.

26 There are well-defined legal barriers-to-entry in financial services markets, analysis of these are beyond our scope here (see Lindsey and Teles 2017).

the best value to the consumer given competition, meaning the absence of state-set barriers to competition (Rogers 2019). Competition means the best quality product and most economic efficiency through consumer sovereignty. To attempt to regulate one stage-of-production (again an arbitrary measurement) is a category error in that competition theory describes the dynamics of entrepreneurship along the value-creation process. The attempt to capture an 'industry' or 'market' at a given time and place as we have found is anachronistic when we understand the dynamics of creative destruction.

In a *reducto ad absurdum* argument which may ring truer than most, we can state that every product (artist) is a differentiated (unique) product, there are no substitute 'goods'. As mainstream theory predicts, a differentiated product can bring monopoly power and above-normal profits.

Entrepreneurs (empresarios, people) are constantly engaging along the temporal stages of production to create events and events which create value for consumers (popular music 'fans' or high-brow art 'aficionados' or 'underserved' people who gain 'below-market' 'fair-value' access to not-for-profit cultural events). If entrepreneurs are not creating value, they will go bankrupt. This is the market test for any catallactic activity. For outside 'experts' to impose their own ideals on this process may be hurting rather than helping consumer choice and creativity in the arts, especially when we understand that by definition (in many but not all situations[27]) we are dealing with artist market power.

V. Critique of recent work in cultural economics on live-event ticketing 'economic' policy through the lens of market competition theory

The first straw-person we would like to create to start our critique of orthodox thought around ticketing economics is the research of Alan Krueger. We have two critiques of Kruger's work in light of catallactic theory. The first useful way that Krueger's research can help us understand the 'open society' as opposed to the 'economy' is in research methodology, where we find that the data (empirics) available helps determine the 'economic' theory (deduction), the opposite of the way in which science might be conducted, and, that arbitrary measurement in this case misses the wide-tail effect in the new economy. The second is Krueger's finding that the 'superstar effect' has led to increasing inequality in the economy

[27] It is a question of how we define the 'artist', another evergreen topic in cultural economics. We gesture towards this research category when we look at the long-tail distribution on both the supply and demand sides for live music events relative to orthodox research and measurement.

despite that subsequent research between his 2005 paper and his 2019 book show that this effect has dissipated with wide-tail new economy creative-destruction.

Do desired results determine analytical method in the ‘economics’ of regulation?

At the time Krueger’s is writing his oft-cited 2005 paper in the *Journal of Labor Economics* Clear Channel Communications (CCC) is the popular *bete-noire* in the music industry, much as Ticketmaster (Live Nation) is today.[28] Krueger states how the Telecommunications Act of 1996 (the 1996 Act) “relaxed constraints on radio ownership” (22), and allows Clear Channel to own more than 1,200 radio stations in various locations (firm geographical horizontal-integration and firm geographical risk-diversification). CCC as well stages concerts in many of these same geographic markets (vertical integration).[29]

In Krueger’s analysis (with apparently a non-Borkian pre-analytical vision[30]) we begin by assuming that CCC has monopoly power over certain markets due to vertical integration. Because CCC has large market-share in radio (the promotion stage-of-production), they believe that then CCC would control the market for live concerts (the ticketing and final stages, downstream from promotion) in the same geographic area, because they have vertical integration, market-share and thus control along these stages-of-production. However, after defining his market firm-share and industry-definition segments, he finds,

> The unweighted correlation between Clear Channel’s concert share and radio share across the 98 markets was essentially zero (r = .01). When the data were weighted by the size of population in each market, the correlation was positive but statistically insignificant (Krueger 2005, 23).

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[28] CCC’s concert promotion business, as opposed to their ownership of TV and radio stations, proved relatively unprofitable (the creative destruction of catallaxy), so they spun it off as Live Nation, which later merged, with the obligatory virtue-signaling rent-seeking regulatory concessions, with Ticketmaster, after realizing the transaction costs savings of such a vertical integration. Tschmuck (2017b) tells this story.

[29] CCC has 41% of the ticket revenue of “the biggest four promotors” in 2003 (Krueger 2005, 23, Fig. 7).

[30] See Schumpeter (1954) on how vision precedes analysis. We also follow Schumpeter that any model may be useful, it depends upon which problem we are trying to solve. We might reasonably argue that Kreuger has an ‘economic’ as opposed to ‘catallactic’ pre-analytical vision.

Krueger surprises himself (and the readers of the labor journal) and realizes Bork's paradox. What is interesting to note is that CCC owns radio stations in 98 cities and that that does not buy them any market power across stages-of-production in those cities when aggregated. We should also notice that, per Vassallo (2017), Krueger's findings might be different had he made slightly different industry-analytical measurement decisions. This again illustrates the thesis in this paper, which is that we should be wary of giving too much discretion and autonomy to regulators with state-sponsored monopoly on coercion who by definition make arbitrary decisions and who are prone to capture by those they regulate.

In Krueger's pre-analytical vision, the 1996 Act appears to be a significant event or structural break or intervention effect in applied economic analysis. He finds that local markets were in states of monopoly for live music concerts prior to the Act, but the USA as a 'market' was not.

He then finds that, in contrast to his *a priori* assumptions, an increase in national monopoly (CCC) after the Act (as he has measured the USA concert industry with his analytical-assumptions) actually leads to *more competition* in the previously *more monopolized* decentralized geographic regions of measurement for live concerts (24-25), after 'deregulation'.[31] This helps confirm our corollary thesis that the removal of state-prescribed barriers-to-entry increases competition and consumer sovereignty, in whatever market however subjectively-determined.

And of course, CCC concert promotion itself was to experience creative destruction just five years later as merged with Ticketmaster for concert promotion. Thus any regulatory measurement at any given time is as well anachronistic (arbitrary and temporary).

Our critique of the 'economic' here is how Krueger begins with the data, and then builds his theoretical approach from there. In his analysis of CCC's 'monopoly' he states that he eventually chooses to measure as CCC's venue | concert market, those "with a capacity of at least 2,000 seats – because smaller concerts are unlikely to be promoted on the radio….". (24). Thus in order to create more justifiable data to show that 'monopolies' are harmful, we are altering assumptions away from more comprehensive theoretical categories, and thus more robust analytical conclusions (Pennington 2011). By defining the market down to the analytical categories we would like to examine, and in part determined by the data which is available, is, again arbitrary 'economics' and not within the

31 And are not live events 'local' experience goods?

Hayekian ideal (with real-world public choice repercussions) of an open competitive (cooperative) society without positive law-making.[32]

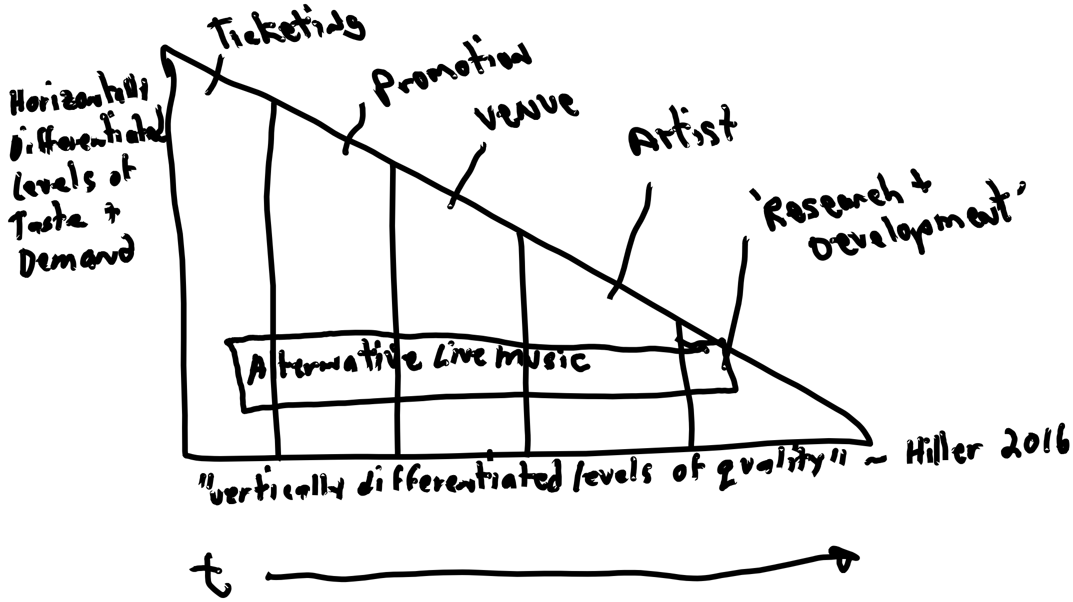
The first heuristic we would like to introduce to critique Krueger's method is to show how 'alternative' music might fit into the live music stages-of-production we have shown above. For example, not all live music events are 2,000 seat and above[33], nor are the promoters allied with radio necessarily. Of course there are thriving local music scenes beneath the radar of economists and data available to be aggregated. Nonetheless these events are part of the live music 'industry' however measured by whom and for what purpose.[34]

32 One of the policy recommendations in Hayek 1968 is to have a fourth branch of government, one which is overtly designated as redistributional. Hayek was not against a social safety net, only that this positive, public law, 'economic' safety-net be separated, separation of powers, from the more negative-rights oriented administration, legislature and courts of civil or common law, the superstructure necessary for an emerged catallactic order based on consumer preference.

33 This of course is the debate over partial versus general- equilibrium analysis of an 'economy' or a 'market' or an 'industry', and then again over the short or long-term, and who decides what these terms are to mean. Levey and Peart (2017) find that positive 'economic' rule-making is best left to public discussion rather than 'expert' decision.

34 In *Rockonomics* (2019) Krueger uses as a basis for 'industry' analysis in general the *Billboard* Top 100, again defining down the category of analysis to data which is available (an arbitrary determination), though to be fair wider-tail supply and demand are discussed as well though not to the point where humility in method is explained to an ascertainable degree. It is a safe bet to say that 99% of musicians have not experienced the *Billboard* Top 100. We can categorize this 'market' as 'alternative music'. One example I enjoy about alternative music as R&D is the simultaneous emergence of 'punk' in the mid-1970s with the Saints in Australia and the Ramones in New York. Now the punk sound is ubiquitous.

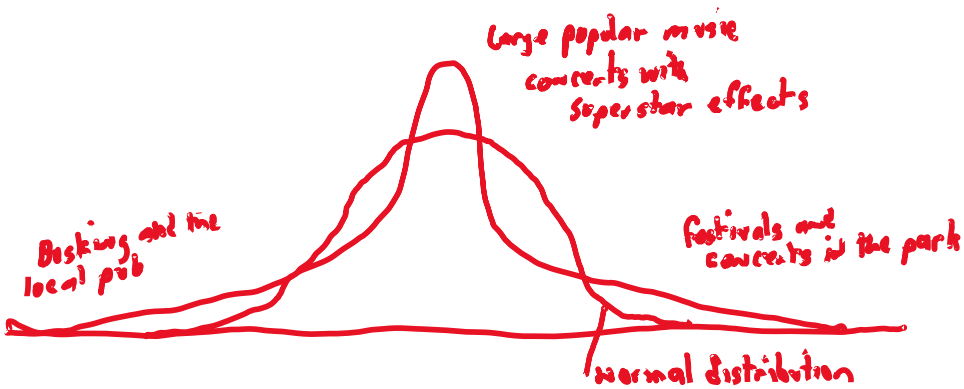
Figure Four: Heterodox Approach to Concert Stages-of-Production



When we include alternative live music along the vertical stages-of-production (per Krueger 2005 we can label 'alternative' those venues which house less than 2,000 in audience number and/or those venues which do not report their results to *Pollstar*), we immediately find that Live Nation's market dominance aggregates are over-reported.[35] Capturing these alternative consumer choices along the capital structure may be a better theoretical and practice alternative than fitting theory to data. "Any measure of overall quality of music must capture this heterogeneity in preferences" (Hiller 2016, 310). In turn we now show long-tail (Anderson 2006) alternatives to the orthodox measurements of popular music concerts.

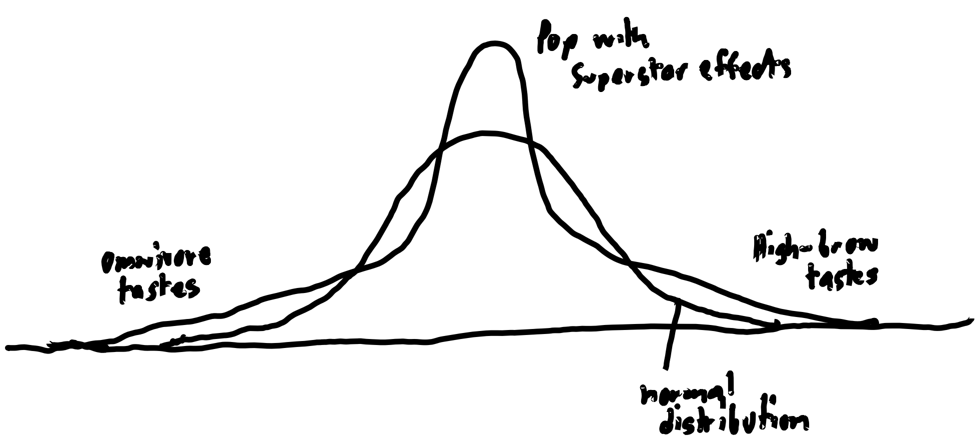
35 And measurement determinations determine as-is regulatory policy (Vassallo 2017).

Figure 5a: Wide-Tail Supply-Side in the Stages-of-Production for Live Music



How measurement is made of markets to be regulated, or even as an object of analysis, is a highly subjective (and perhaps oftentimes political) process, and marginal changes in measurement can effect regulatory results (Vassallo 2017). There is a large and growing music festival movement in part due to the substitution away from the purchase of recorded music to live music, which directly competes, in many if not most cases, with Live Nation [CCC] venues. Kreuger captures the data he needs while not incorporating a fuller, perhaps more catallactic approach. “The live music sector and especially festivals have expanded rapidly…[during these times of ‘new’ economy technical change],” (Cameron 2016, 6). To not include wide-tail music demand and supply in policy recommendations, regulatory rulings and ‘economic’ analysis may be a category error.

Figure 5b: Wide-Tail Demand-Side in Tastes for Music



In looking at (horizontal) taste-diversification in music, it is hard to see how any one firm can gain a monopolist's power (however defined by whom and with what knowledge-assumptions and for what reason), given the multitude of consumer-choice in the new economy along vertical supply value-creation. This is especially true in the music business, given that the 'industry' is capricious and serendipitous, and therefore experiences super-dynamic demand and supply. There are countless firm and entrepreneurial, asset-specific, vertical stages-of-production providing for discriminatory horizontal demand. Measurement is apparently (axiomatically) arbitrary. Again, with what knowledge do we categorize our objects for regulatory action?

A predisposition for positive 'economic' intervention to reduce 'inequality'?

Krueger (2019) states that the superstar effect is a cause or image of the 'rising inequality' in the United States,[36]

> I was then chairman of the President's Council of Economic Advisors. I had been invited to speak [at the Rock and Roll Hall of Fame] because I had the idea of using the music industry as a metaphor to draw parallels with the U.S. economy – in particular, the financial struggles of middle-class families and the growing gap between the wealthy and everyone else. The key theme was that the U.S. job market had become a superstar, winner-take-all affair, much like the music industry, where a small number of top performers did fabulously well, while almost everyone else struggled to make ends meet (1).

Kruger is writing this for publication in 2019, while there has been ample research refuting his 2005 'economic' findings on the superstar effect, not least due to the wide-tail distribution of tastes and product reducing 'superstar' effect in the new economy. Champarnaud (2018, originally published 2014) finds that superstar effects can flatten out, and Black et al. (2018, originally published in 2007) state,

> In spite of the dominance of superstars every year of the 1997 to 2005 *Pollstar* data, the conventional wisdom based on the analysis of escalating ticket prices does not support the proposition that the rich are getting richer. If anything our data suggest the opposite –

[36] The debate over 'economic' *outcomes* leading to 'inequality', with arbitrary and perhaps unresolvable categories of analysis in determining 'inequality' (due to differing pre-analytical visions concerning 'fairness'), can be juxtaposed with catallactic thinking about *process*. If the process is 'fair' so are the outcomes. We are defining 'fair' here as the absence of any public law barriers-to-entry which prevent the competing-away of 'above-normal' profits through consumer sovereignty.

> that those in the lower part of the tour revenues distribution are gaining relative to those at the top (200).

This finding supports our wide-tale market-structure heuristics in Figure 5 above and Rogers (2018) that the best policies to prevent monopolies are those that do not prevent competition and/or give special protection to entrenched interests based on ‘economic’ findings.[37]

Is Selling-out selling-out?

The second straw-person we are creating to help us understand competition theory in light of the orthodoxy is the work of Pascal Courty. Courty gives us three ideas which we can use to better understanding competition theory and consumer sovereignty. The first is that not-for-profits want to sell tickets for their performances at a ‘fair price’ (however determined by whom and with what knowledge and for what reason[38]). The second is that ticket ‘bots’ are something that should be (and could be) outlawed. The third is Courty’s recommendation for virtue-signaling (‘fair price’ ticketing firms) to create a centralized exchange to distribute tickets in the secondary market along the stages-of-production to ensure said ‘fair-pricing’ for those who obtain these tickets in the primary market and are unable to attend the event.

Courty (2019), who in general agrees that secondary markets provide consumer value, but for some it seems inexplicable reason seems to determine that outlawing

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37 DiLorenzo (1985) explains how the origins of antitrust regulation in the USA, beginning with the Sherman Act of 1890, is the result of special-interest groups lobbying (rent-seeking) the legislature for protection from competition. We can find this today where Mark Zuckerberg of Facebook is now seeking ‘regulation’ in the social-media industry to entrench his firm’s dominant position. “While entrepreneurs benefit from unrestricted free entry into markets, they have a time-inconsistent incentive to lobby for government entry restrictions once they become successful” (Sobel et al. 2007). Lindsey and Teles (2017) describe the harm that this rent-seeking has rendered for our economy through today in terms of inequality, elitism and lower levels of economic growth and creative-dynamism.

38 I like to call purposefully pricing below what one knows to be a final market-demand price “virtue-signaling”. This concept applies to many areas in political economy, not just ticket pricing. A significant example of virtue-signaling today is the Business Roundtable’s August 2019 declaration that a firm’s responsibility is to ‘stakeholders’ (however defined by whom and for what purpose) rather than “shareholder primacy”. https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans.

bots is a good idea, speaks of a Fair Price Ticketing Curse (FPTC), where not-for-profit art organizations want to sell their event (perishable goods) tickets at a 'fair price' for their supporters of the arts but the secondary market prices these events at what the host sees as an unvirtuous level. We find that 'underpricing' is a problem in the arts,

> Under-pricing applies to many non-profit events that are meant to be free, sold at cost, or at a fair price. Tickets are issued to coordinate large crowds, avoid unnecessary lines [*sic*], and spare [vip, *sic*] visitors from being denied access (348).

Where do we begin our critique of this 'economic' thinking? In the first instance nowhere does Courty define what is a 'fair price' except in reference to cost (a subjective measure[39]). We know from time-based stages-of-production that the face-value of a ticket is set in advance of the performance, so any face-value by definition is an estimate (a 'fair-price' estimate it may be, but still an arbitrary number).[40]

Which brings us to a larger point. Is it normatively bad for a not-for-profit organization to have performances which are sold-out, and therefore whose tickets are sold on the 'secondary market'? Is this not a sign of providing a service to the community (ostensibly the reason for the not-for-profit status). Apparently in 'economic' thinking it is wrong to "sell-out", of course in 'catallactic' thinking it is a sign of creating value in free-exchange.[41]

Is specialization of labor a bad thing?

The second "straw-person" point we would like to make about Pascal Courty's work (both 2019 and the related post on EconomistsTalkArt.org) is about 'bots' and the economics of ticketing. Since the beginning of recorded history all investment has been towards labor-saving devices (Cameron and Neal 2003). To say that robots are something to be feared (and/or specifically taxed)

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[39] See the canonical Buchanan (1969) on subjectivity in opportunity cost.

[40] My reading of Courty (2019) is that they are in general for the relaxation of prohibitions against 'scalping' as has been welfare-enhancing, it is only in the particular case when a firm wants to signal 'fair pricing' (virtue-signaling) that economy (regulation) is required over catallaxy (free-exchange).

[41] In addition being able to attend a 'sold-out' event may create value, bragging-rights, experience value, for the consumer who is savvy enough to negotiate a ticket.

misunderstands the historical process of economic development. Endogenous technological change brings creative destruction, efficiency and reductions in absolute poverty (increasing standards of living for everyone) over the long term, but creative destruction also brings adjustment costs to some over the short-term.

It is in general these short-term costs that 'economic' rather than 'catallactic' thinking is applied through positive public law-making. As we explored above there are tickets for events which are not made available on the primary market for many entrepreneurial reasons. When we assume then that all value is created in the primary market this ignores the temporal stages-of-production leading to the live event.

We can use the same critique here that is used with bots for investments into the stock-markets (and those with differing pre-analytic visions towards the 'economic' will disagree with the following reasoning for the same reasons as they do with the use of bots in finance). The use of technology, bots, reduces transactions costs by providing more information about the market than human beings can do without this technology. This information 'deepens' the market, providing more information to consumers in this market.[42]

If regulators are indeed mandated to 'protect' consumers of live events, then bots are helpful because they provide more information about market conditions along the temporal stages of production, as the event nears, giving more and more accurate options (price-signals) to those wishing to attend the event. Preventing bots (however defined by whom and with what knowledge) would reduce competition, benefiting those ticket sellers who are already in the market.[43]

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[42] "Brokers contribute to welfare by allocating tickets to high valuation consumers. Other arguments in support of brokers [bots, *sic*], not modeled here, are that they add liquidity and help with the price discovery process" (Courty 2019, 352, fn11).

[43] "When prices are set [in the earlier primary market stages of production, author] far below resale values [in the later secondary markets], scalpers operate computer software programs called (ro)bots to scrape large numbers of tickets and resell them at ridiculous [*sic*] markups. *There is no question that that bots deprive fans from tickets*" (*emphasis added*)" (Courty 2019, 349).

As we discuss above, bots create value for consumers by allowing price-revelation at later points in time, giving 'fans' with disaggregated levels of 'fandom', as measured by willingness-to-pay, more, and more later, options for attending an event. Courty finds that bots often "get around security systems " (ibid.). If indeed those participating in the secondary markets break contracts agreed-to as a condition of accessing primary seller portals, then there are already remedies in

VI. Conclusion

Which bring us to the final critique of Courty's work which we will use here. In the specific case of firms wishing to signal a 'fair price' however determined, Courty (2019) recommends that the firm (usually a not-for-profit arts organization, although Springsteen and the Pope are examples) randomly distribute the (virtue-signaling the below-market face-value price) tickets in the primary market, then create a Central Exchange to again randomly distribute the tickets of those who return their tickets to the exchange because they can't attend the event due to emerged subjective opportunity costs along temporal the stages of production leading to the perishable event.[44] This requires verification of the identification of everyone attending the event, adding to transactions costs (subtracting from experience value).

Central Exchange transactions costs of this schema means queuing and additional opportunity and transaction costs, including the psychology costs of uncertainty for those who have a strong preference for attending the event while they are waiting for the random allocation of tickets to take place. Is this schema really worth the virtue-signaling? Isn't market allocation of even 'fair' market primary pricing more efficient and helpful than rationing of tickets in the secondary market? Does virtue-signaling meet the cost / benefit analysis of rationing? Is selling-out, selling-out?

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commercial law. Again 'face value' prices are an educated entrepreneurial estimate (sometimes purposefully held low for 'virtue-signaling') ahead of the actual final market for the perishable live event. Bots help realize the final market-price equating supply and demand temporally (the perishable goods problem), realizing value for the consumer through creating pricing / temporal options, which emerge in the market more readily with than absent bots. And, the enunciated purpose of regulatory intervention, at least historically, has to been to 'protect' the 'consumer'.

Sellers in the secondary market need buyers just as much as 'fans' need sellers. If secondary prices were indeed 'ridiculous' no rational fan would buy them and the bot operator would deservedly go bankrupt. Under catallactic rather than economic thinking, the market-test is more robust than arbitrary and anachronistic regulation. In addition there are tickets such as holds and pre-sales, acquired as risk-sharing along the stages-of-production, which can become available in secondary markets as events unfold and entrepreneurs manage their risk. This can apply to both profit-maximizers as well as virtue-signalers.

[44] Giving exclusive distribution in the secondary market to those who issue tickets in the primary market of course creates a public choice 'insider' problem.

Whither the not-for-profit performing arts on ticketing 'economy'

The catallactic (free-market) way for arts organizations to realize both virtue-signaling (through 'underserved' access to the arts) and to minimize transactions costs while at the same time ensuring a full attendance might by price discrimination in the primary market. The values of the organization (the 'firm' or organization hosting the event)[45] might determine which percentage of 'fair price' tickets get distributed by random queuing for those that apply due to underserved status (however determined by who, with what knowledge and towards what ends), while another percentage is auctioned by the host, to maximize producer and consumer surplus for this firm value-category. Thus we avoid the secondary markets,[46] which academics seem ambivalent about and against which regulators oftentimes and inconsistently are antagonistic.

The question then remains what we do we do with those who have been allocated 'fair price' tickets and then can't attend the event without setting up an overtly and prone to special-interest group rents Central Exchange? Without the necessity of identification requirements as required by the Central Exchange as recommended by Courty (2019) 'fair value' ticket recipients could simply give (or better-yet sell if they are indeed 'underserved') their category of tickets to others in the network, either digitally or on-site during the walk-up. The requirement of identification is obtrusive, unnecessary and wasteful. This might be a good example of 'open society' juxtaposed with 'economic' thinking as we have discussed throughout this heterodox cultural economics research.

45 See Klamer (2016) on realizing shared values.

46 There is a literature on the efficiency of direct host auctions in the primary market, see Halcoussis and Mathews [2017] and Cameron [2008], both compiled in Cameron ed. (2018).

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